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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY IRBY,

Defendant and Appellant.

A136934

(Solano County
Super. Ct. No. VCR210318)

Defendant Anthony Irby appeals following the revocation of his probation and commitment to state prison. Irby argues the Solano County Superior Court assessed restitution and revocation fines in error when it revoked his probation and sentenced him to prison in 2012. We agree. Because the superior court had imposed restitution and revocation fines in 2011 when it placed Irby on probation and suspended the imposition of his sentence, it could neither increase the fines nor impose different fines when he was sentenced to prison in 2012. We modify the imposition of fines and otherwise affirm.

BACKGROUND

In September 2011, pursuant to a negotiated disposition, the superior court suspended imposition of judgment and sentence and placed Irby on probation for five years with a year in county jail for a single violation of Penal Code section 288, subd. (a), the commission of a lewd act with a child. The court awarded appropriate credits, and imposed various fines that included a \$200 restitution fine authorized by section 1202.4 and a \$200 probation revocation fee authorized by section 1202.44.

In September 2012, following his second violation of probation, the superior court entered judgment and imposed sentence. Irby was committed to prison for the midterm of six years, assessed a restitution fine of \$500 and a revocation fine of \$500. He timely appealed.

DISCUSSION

Irby's counsel on appeal argues that the imposition of the restitution fine and probation revocation fee when the court entered judgment and sentenced him to prison were improper. The Attorney General agrees and so do we. The fines imposed when Irby was originally placed on probation survive revocation, and there is no statutory basis that allowed the court to award additional or different fines when it imposed judgment and sentenced him to prison. (*People v. Chambers* (1998) 65 Cal.App.4th 819, 822-823.)

DISPOSITION

The judgment is modified by striking the \$500 restitution fine and the \$500 parole or probation revocation fee. The \$200 restitution fine and \$200 probation revocation fee imposed by the superior court on September 9, 2011, remain in effect. As modified, the judgment is affirmed. The superior court is directed to prepare an amended abstract of judgment in accordance with this disposition and deliver it to the California Department of Corrections and Rehabilitation.

Siggins, J.

We concur:

McGuiness, P.J.

Pollak, J.